

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76 2105

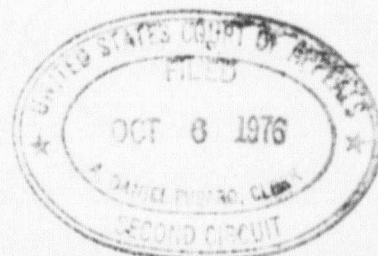
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
MICHAEL WILLIAMS, :
Plaintiff-Appellee, :
-against- :
BENJAMIN WARD, PAUL REGAN, :
Defendants-Appellants.:
-----X

APPENDIX

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-
Appellants
Two World Trade Center
New York, New York
Tel. No. (212) 438-3394

B
p/s



CONTENTS

	<u>PAGE</u>
Relevant docket entries	1a
Complaint	4a
Notice of motion to dismiss complaint	16a
Memorandum and order enlarging defendants' time to answer	18a
Memorandum and order denying motion to dismiss	21a
Plaintiffs notice of motion and motion for summary judgment and supporting papers	23a
Affidavit of Barabara S. Resnicoff in opposition to plaintiff's motion for summary judgment	28a
Plaintiff's affidavit of facts	43a
Memorandum and order directing submission of additional material	49a
Memorandum and order granting summary judgment to plaintiff	53a
Notice of motion to vacate grant of summary judgment	56a
Affidavit of Robert S. Hammer in support of motion to vacate summary judgment	57a
Defendants' Rule 9(g) statement	64a
Plaintiff's affidavit in opposition to motion to vacate summary judgment	66a
Memorandum and order denying stay pending appeal to vacate summary judgment	70a
Memorandum and order denying stay pending appeal	74a
Final Judgment	75a
Notice of Appeal	77a

RELEVANT DOCKET ENTRIES

	PROCEEDINGS	Date Order Judgment
8-6-75	(1) Filed complaint and issued summons.	
8-6-75	(2) Filed Order that the pltff. is permitted to proceed in forma pauperis without prepayment of fees. Knapp, J.	
9-03-75	(3) Filed true copy of order permitting pltff. to proceed in forma pauperis filed 8-6-75.	
9-03-75	(4) Filed Summons with marshals return: served, Commissioner of Correctional Services by M. Bezirjian on 8-27-75 Chairman, N.Y. State Parole Board by B.B. Pornplum on 8-27-75.	
10-29-75	(5) Filed affidavit of Michael Williams in opposition to defendants motion.	
1-12-75	(6) Filed deft's notice of motion to dismiss complaint ret. 12-5-75.	
1-12-75	(7) Filed deft's memorandum of law in support of his motion ret. 12-5-75	
1-14-75	(8) Filed memor-Decision # 43393: Pltff moved by notice of motion for an order granting summary judgment. Pltff's motion is denied on condition that deft's serve & file thier answer and/or any motion within 10 days of the entry of this memorandum & order. So ordered. Knapp, J. m/n	
1-04-76	(9) Filed pltff's notice of motion for summary judgment ret. before Knapp, J. on 1-9-76	
1-29-76	(10) Filed affidavit of B.S. Resnicoff in opposition to pltff's motion for summary judgment.	
3-30-76	(11) Filed affidavit of facts by pltff, with affidavit of service.	
4-09-76	(12) Filed Memorandum & order \$ 44205: Ordered that within (20) days of the date of this order, the deft's are directed to do as indicated. so ordered. Knapp, J.	

RELEVANT DOCKET ENTRIES

- 6-11-76 (13) Filed Memorandum & Order #44559: Pltff's motion for summary judgment granted, deft's being in default. So ordered Knapp J.M/n judgment Ent. Clerk Ent. 6-16-76
- 6-9-76 (14) filed deft's affidavit & notice of motion vacating the grant of summary judgment ret. 7-28-76.
- 6-9-76 (15) Filed deft's memorandum of law in support of motion ret. 7-28-76
- 6-16-76 (16) Filed affidavit of Michael Williams in reply to motion to vacate summary judgment issued by decision on 6-9-76
- 7-23-76 (17) Filed Memorandum & Order # 44822: on 7-9-76 deft's moved for an order vacating the grant of summary judgment to pltff. on default. the motion to vacate is denied, as indicated. So ordered, Knapp, J. m/n
- 8-04-76 (18) Filed Memo-End., The application for a stay is denied, as it seems to be more appropriately addressed to the Court of Appeals. So Order. Knapp J. m/n pro-se
- 8-5-76 (19) Filed judgment...Pltff's motion for summary judgment is granted on default. The Deft shall within 30 days of the filing of this judgment furnish pltff with a) copies of all unconfidential material in his institutional file and b) a fair summary of confidential material, which summary shall not reveal sources, but shall fairly state any conclusions adverse to the pltff, which may be drawn therefrom. Not sooner than 10 days thereafter, but in no event later than 60 days from the filing of this judgment, the Parole Board shall grant pltff a new release hearing. The case is hereby terminated, without prejudice to an application to restore it to the calender for the purpose of enforcing the above specified relief So Ordered. Knapp J.
- 8-7-76 (20) Filed deft's notice to appeal to the USCA from final judgment entered on 8-5-76. Mailed copy to Mr. Michael Williams, Arthur Hill Correctional Facility.

RELEVANT DOCKET ENTRIES

- 10-10-76 (21) Filed opinion #43511 Deft's motion denied without prejudice to renewal upon completion of any pending state proceeding.
- 9-14-76 (22) Filed ptffs. memo in opposition to motion to dismiss
- 9-14-76 (23) Filed memo of Law in reply

4a
COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MICHAEL WILLIAMS,

Plaintiff,

COMPLAINT
(Civil Rights)

- against -

§ 1983, 42 U.S.C. (U.S.C)

HON. BENJAMIN WARD, Commissioner of the
department of Correctional services,
and Hon. Paul J. Regan, Chairman,
New York State Parole Board, Albany,
New York,

Defendants.

-----X

1. This is a civil rights action authorized by 42 U.S.C., sec. 1983, to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C., sec. 1343. Plaintiff seeks declaratory relief pursuant to 28 U.S.C., sec. 2201 and 2202. The plaintiff further seeks injunctive relief in this action to enjoin the defendants from further violations of the plaintiff's constitutional rights to procedural due process of law as hereafter set forth in this complaint.

5a
COMPLAINT

PLAINTIFF

2. Plaintiff, Michael Williams, is and was at all times herein mentioned a prisoner of the state of new york, and in the custody of the New York state department of Correction. He is currently confined at the Eastern New York correctional facility at Napanoch, New York, State of New York.

The plaintiff is eligible for parole on May, 1977, in connection with his sentences of twenty-years to life imprisonment, for the crimes of Murder, 2d degree, rendered by the Supreme Court, Kings County, of the State of New York, on the 27th day of May, 1964. The plaintiff is eligible for temporary release program on May, 1976, one-year before the parole board meeting for parole. The plaintiff is a jailhouse lawyer, and member of the National Lawyers guild (New York City Chapter), and national Association for Justice, Inc. (National chapter) in Washington, D.C., and legal instructor of the Eastern legal Action Assistance committee for Criminal justice relief.

6a
COMPLAINT

DEFENDANTS

3. Defendant, Benjamin Ward, is the Commissioner of the department of correctional services for the state of New York, and has business offices in New York City, and Albany, New York. He is responsible for the overall operation of the department of correctional services, and each institution under his jurisdiction including, the Eastern New York correctional facility, at Napanoch, New York, where the plaintiff is presently confined.

4. Defendant, Paul J. Regan, is the Chairman of the New York State Parole Board, and has offices in the City of New York, and Albany, New York.

He is responsible for the operation of the New York State parole board, and are responsible for the fixing of the terms of the State of New York prisoners for parole release, and for the determining whether a prisoner will be released on parole before the end of his or her term, along with the votes of the other parole board commissioners.

On May 3, 1971, a letter was written by Mr. Charles Fastov, chief probation officer of the Brooklyn probation department, upon the request of Justice John E. Cone, in respond to the

7a
COMPLAINT

letter, and copies of this letter was sent to the former Commissioner of correctional services, Mr. Russell G. Oswald, Albany, New York, and Mr. Paul J. Regan, Chairman of the New York State parole board, and a copy of the letter forwarded to justice Cone. (plaintiff's exhibit 1).

The plaintiff now quotes a extract from this letter and which is the important portion of the letter in this action.

"Williams has a history of mental disturbance and the attached letter points to the probable need for an updated psychiatric review of his condition. Justice Cone asked that both the correction services department, and the Board of parole be given copies of this inmate's letter."

In another letter written by Justice Cone to Mr. Oliver A. Tweedy, of the Executive Clemency Bureau in Albany, New York, on August 5, 1974, where at the time the plaintiff had pending a request for executive clemency relief before the governor of the State of New York, the justice stated that the plaintiff has a history of mental disturbance and was dangerous, and indicated that the plaintiff should not be released upon executive clemency by the governor of the State of New York. The plaintiff annexed this letter as his (exhibit 2).

8a
COMPLAINT

The plaintiff quote from this letter of the judge's words:

"Dear Mr. Tweedy:

I do not under any circumstances recommend commutation of sentence for Michael Williams, , as he has a history of mental disturbance.

In my opinion he is dangerous. Herweith is a photocopy of a threatening letter addressed to me from Michael Williams, together with a copy of a from our then chief probation officer Charles Fastov to Russell G. Oswald, commissioner of correctional services, dated May 3, 1971.

Please advise me of whatever action you take."

The plaintiff never received a respond from the judge to the letter that he wrote him dated, April 21, 1971, nor did the plaintiff receive a copy of the letters written by the judge to the executive clemency Bureau and the Commissioner of correctional services, and the chairman of the parole board.

On April 9, 1975, the plaintiff did receive copies of these letters herein mentioned from his retained attorney files in a Federal civil rights action which was being conducted in the Federal district court for the Eastern district of New York, in which the plaintiff handled the trial pro se, without counsel.

After the discovery of this false information by the plaintiff on the above date, the plaintiff filed charges against the judge with the judiciary relation committee

9a
COMPLAINT

of the Appellate Division for the second department, 16 Court street, Brooklyn, New York (attention: Mr. Frank A. Finnerty) by letter dated, April 9, 1975, and to the New York State judicial conference, dated, 270 Broadway, New York, N.Y. and as a result, a investigation is being conducted against this judge for his possible removal from the bench for misconduct in office.

A committee meeting was held the latter part of May, 1975, relative to the charges filed against judge Cone at the judiciary relation committee to determine whether any misconduct actually taken place, and based upon the evidence which has been supplied to the committee in the form of the two letters herein mentioned, a hearing will be held in the matter. To date, I have received no decision in this matter.

Furthermore, plaintiff wrote letters to the parole board chairman, and the new commissioner of correctional services informing them that I an aware of this false information in the files against me and that the information should be removal from the records, and no further reference made to this information was I appear before the parole board, and when I am eligible for temporary release programs in May, 1976, one-year before parole release consideration.

10a
COMPLAINT

I received no respond from the letters. These letters were mailed on April 11, 1975, from the Federal detention headquarters on West street, New York city, where I was detained awaiting trial in the civil rights action.

A letter was written to the governor of the state of New York, Hon. Hugh Carey, and requesting a full investigation into this matter by his office. This was also written on April 11, 1975. No respond was ever received from this letter. A letter was written to Mr. Tweedy of the executive clemency Bureau, dated, April 11, 1975, informing him of the discovery of this false information that was mailed to him by the judge, and accused his office of causing my two prior requests for commutation of sentence in 1973, and 1974, and requested reconsideration in view of the foregoing discovery because unfair consideration was given to my requests. On May 30, 1975, plaintiff received a letter from Mr. Tweedy dated, May 29, 1975, in response to the letter of April 11, 1975. This fact was not denied by him. On May 15, 1975, another letter was written to Governor Carey, requesting an investigation and the firing of Mr. Charles Fastov, as Director of the probation department, for falsely accusing the plaintiff as being mentally disturbance and with a history of mental disorder. To date, no respond has been received from him on this request.

11a
COMPLAINT

Subsequently, plaintiff filed notice to sue the city of New York relative to the false information filed with the parole board, and commissioner of correction, and the governor's clemency office on the dates mentioned in this letter, and charges the city of New York with libel and demanding one-million dollars in damages against the judge, and five-hundred-thousand dollars against the chief probation officer (now Director of the dept. of probation).

The notice was filed on the 24th day of April, 1975, in the office of the Comptroller of the city of New York, and assigned the filing number - #4036-75.

An oral examination date has been set for July 17, 1975, at 2:30 P.M. in the office of the Corporation counsel of the city of New York, Tort Division, at 1503 Municipal Building, New York, N.Y. 10007.

Under state law, the actual suit cannot be filed in the Supreme court until after 90 days after the filing of the notice to file suit, and the claim is not adjusted by the city. In this case, the claim will not be adjusted until the oral examination has been conducted on July, 1975.

12a
COMPLAINT

LEGAL CLAIMS

The plaintiff rights to procedural due process of law under the 14th Amendment to the United States Constitution has been violated when the plaintiff was not given the opportunity to receive a copy of the letters sent to the Commissioner of correctional services, and Chairman of the parole board in May, 1971, and the letter sent to the Commissioner of the Executive clemency Bureau in August, 1974, from the probation department, and justice of the Supreme court, Kings county, respectively. That under the 5th Amendment to the United States constitution the plaintiff was entitled to be informed of any accusation made against him, and the right to answer the charges against him.

Then the charges set forth in the letters to the parole board, and commissioner of correctional services, as well as the commissioner of the Executive clemency Bureau, were supplied accusing the plaintiff of being mentally disturbed, and dangerous, and recommending that he not be released on parole by the governor and given a updated psychiatric review and current treatment for the condition, the plaintiff was not afforded the right to receive a copy of the letters-charges, and the opportunity to answer the charges or show the false

13a
COMPLAINT

information contained in these letters. This constitutes a deprivation of the procedural due process right under the 14th Amendment to the constitution.

Since this false information can be clearly refuted by the plaintiff, and could have been at the time that it was forwarded to the above mentioned personnel, he should have been given the opportunity to do so.

The information supplied to the defendants will result in the deprivation of the benefit of the participation in several temporary release programs such as the work release, and furloughs, as well as early parole release in the very near future. During the early 9 1/2 years incarceration, the plaintiff had never been examined by a psychiatric department, and nothing indicated the need for such an interview or examination. There is nothing at this time to require any such examination of the plaintiff. The plaintiff has been examined two times in the past 11 1/2 years.

These two mental examination took place at the present place of imprisonment, on May 31, 1973, and showed "Passive and Aggressive" personality.

This report is normal in all respects.

14a
COMPLAINT

The second examination took place on June 12, 1974, and no change had been made in the plaintiff's personality since the last examination, the year before. Therefore, there is no showing of any mental disturbance or other disorder as claimed by the Justice of the Supreme Court and the probation department of May 3, 1971 and August 4, 1974. It should be noted that the last letter written by the judge is dated, August 5, 1974, and prior to this letter the two examinations were conducted by the Mental Hygiene department of this facility, and showed nothing to indicate that the plaintiff was mentally disturbed in no respect and contrary to the reports of the herein named persons (judge and probation dept.)

Furthermore, no mental examination nor observance period was ever ordered by the judge or probation department prior to the imposition of the sentence in May, 1964 and this fact is not conversed by any one.

In a bill presented to the state legislature this year, such a provisions was asked to be made law (#1448-Eve-Add's § 622-House Bills).

15a
COMPLAINT

CONCLUSION

WHEREFORE, the plaintiff demand judgment directing the defendants herein to remove the false information from the parole folder, and personal folders of the department of correctional services, and parole division of the state of New York forthwith and that the defendants be enjoined from accepting any such recommendations and other information from the judges, prosecutors, and other outside sources without first supplying the plaintiff with a copy thereof and affording him 14 days to answer the charges in the information and recommendations and respond in writing?

A trial is require and requested in this matter before this court.

Sworn to before me this
day of

Norary Public

Respectfully submitted,
s/_____
Michael Williams, pro se
Box 338, Ulster County
Napanoch, New York 12458



CHARLES FASTOV
CHIEF PROBATION OFFICER

ESx-a Ex 1 CP14
SUPREME COURT OF THE STATE OF NEW YORK
SECOND JUDICIAL DISTRICT
PROBATION DEPARTMENT
SUITE 305, MUNICIPAL BUILDING
BROOKLYN, N. Y. 11201
643-7014

HAROLD POVILL
PROBATION ADMINISTRATOR

B
May 3, 1971

Honorable Russell G. Oswald
Commissioner of Correctional Services
Albany, New York

Dear Commissioner Oswald:

At the request of the Honorable John E. Cone I am enclosing a photo-copy of a letter addressed to him by Michael Williams, Inmate No. 53422-A6-9 at the Auburn Correctional facility. This inmate pleaded guilty to two charges of Murder second degree on two separate indictments and on May 27, 1964 was sentenced to 20 years to life on each count currently.

Williams has a history of mental disturbance and the attached letter points to the probable need for an updated psychiatric review of his condition. Justice Cone asked that both the Correction Services Department and the Board of Parole be given copies of this inmate's letter.

Very truly yours,

Charles Fastov
CHARLES FASTOV
Chief Probation Officer

CF:pl
Enclosure

cc: Hon. Paul J. Regan, Chairman
State Board of Parole
Albany, New York

Justice John E. Cone
Supreme Court - Second Jud. District

BEST COPY AVAILABLE

154-a
Ex 2-cpl+

August 5, 1974

Hon. Oliver A. Tweedy
Executive Clemency Bureau
Department of Correctional Services
The State Office Building Campus
Albany, New York 12226

Re: Michael Williams
MAP #13116,
IIS #1027872

File in
in document
For Liden

11/15/74, 2/1/64
5/64

Dear Mr. Tweedy:

I do not under any circumstances recommend
commutation of sentence for Michael Williams, as he has a
history of mental disturbance.

In my opinion he is dangerous. Herewith is
a photocopy of a threatening letter addressed to me from
Michael Williams, together with a copy of a letter from
our then Chief Probation Officer Charles Pastov to
Russell G. Oswald, Commissioner of Correctional Services,
dated May 3, 1971.

Please advise me of whatever action you

take.

Sincerely yours,

Assistant Administrative Judge

Encls.

cc: Gerald P. Hecht, Assistant Director,
Department of Probation

16a
NOTICE OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL WILLIAMS, :
 :
 Plaintiff, : NOTICE OF MOTION
 :
 -against- : 74 Civ. 3838
 : W.K..
 BENJAMIN WARD, PAUL REGAN, :
 :
 Defendants. :
-----X

S I R :

PLEASE TAKE NOTICE that on the annexed memorandum of law, the undersigned will move this Court at Room 1505 of the United States Courthouse, Foley Square, New York, New York on December 5, 1975 at 2 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the complaint for failure to state a claim upon which relief can be granted and for such other and further relief as the Court may deem just and proper.

17a
NOTICE OF MOTION

Dated: New York, New York
November 12, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
By

/s/ R SR By Dawni B. DASTO
BARBARA SHORE RESNICOFF
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7591

TO: MR. MICHAEL WILLIAMS
Box 338
Eastern Correctional Facility
Napanoch, New York 12458

18a
MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
NOV 14 3 49 PM '75
S.D. OF N.Y.

MICHAEL WILLIAMS,

Plaintiff,

- against -

BENJAMIN WARD, PAUL REGAN, NEW YORK
BOARD OF PAROLE,

Defendants.

MEMORANDUM AND ORDER

75 Civ. 3838

#43393

KNAPP, D.J.

Plaintiff - appearing pro se - filed this §1983 action seeking equitable relief on August 6, 1975. When the defendants failed to answer or otherwise move within the time set by the Federal Rules of Civil Procedure, plaintiff moved by notice of motion dated October 14, 1975 for "an order granting summary judgment pursuant to Rule 56 . . . upon the grounds that the defendants has [sic] failed to appear and answer. More appropriately, this motion should be - and is - viewed as a Rule 55(b) (2) motion for a default judgment. The State Attorney General's Office responded with a cross-motion, dated October 22, 1975, for an extension of time within which to answer. In the supporting affidavit, the movant avers that she "had no knowledge

MEMORANDUM AND ORDER

of the complaint until she received the motion for default".

The grant or denial of a motion for the entry by the court of a default judgment lies within the sound discretion of the trial court. Moore's Federal Practice, Vol. 6, ¶55.05[2] at pp 55-52; Missouri ex rel. DeVault v. Fidelity Casualty Co. (8th Cir. 1939) 107 F.2d 343. Consequently, plaintiff's motion is, in the exercise of my discretion denied, on condition that defendants serve and file their Answer and/or any motions within 10 days of the entry of this Memorandum and Order.

SO ORDERED.

Dated: New York, New York
November 14, 1975.


WHITMAN KNAPP, U.S.D.J.

20a

MEMORANDUM AND ORDER

of the complaint until she received the motion for default".

The grant or denial of a motion for the entry by the court of a default judgment lies within the sound discretion of the trial court. Moore's Federal Practice, Vol. 6, ¶55.05[2] at pp 55-52; Missouri ex rel. DeVault v. Fidelity Casualty Co. (8th Cir. 1939) 107 F.2d 343. Consequently, plaintiff's motion is, in the exercise of my discretion denied, on condition that defendants serve and file their Answer and/or any motions within 10 days of the entry of this Memorandum and Order.

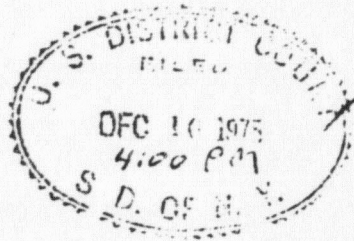
SO ORDERED.

Dated: New York, New York
November 14, 1975.


WHITMAN KNAPP, U.S.D.J.

21a
MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
MICHAEL WILLIAMS,

Plaintiff,

- against -

BENJAMIN WARD, PAUL REGAN,

Defendants.
-----x

MEMORANDUM AND ORDER

75 Civ. 3838

#43511

KNAPP, D.J.

Defendants have moved to dismiss this \$1983 pro se prisoner's rights suit on the ground that it fails to state a claim upon which relief may be granted. In his complaint, plaintiff contends that his reputation has been hurt and his eligibility for parole and other privileges has been severely limited by the ex parte inclusion in his institutional files of certain material classifying him as mentally disturbed, of which he was given no prior notice or opportunity to contest its factual basis. In light of the recent decision in Cardaropoli v. Norton (2d Cir. 9/29/75) (Sl. Opin. 75, 82-83), defendants' motion is denied, without prejudice to renewal upon the completion of any pending state proceedings.

SO ORDERED.

Dated: New York, New York
December 8, 1975.

WHITMAN KNAPP, U.S.D.J.

STATE OF NEW YORK)

COUNTY OF ULSTER)

S.S.:

22a

NOTICE OF MOTION

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE, that upon the summons and complaint herein dated, July 28, 1975, and the annexed motion for summary judgement, and memorandum of law, the undersigned will move this court at room 1506 of the United States Courthouse, Foley Square, New York, New York, on January 9th, 1976, at 2:00 O'clock in the forenoon or as soon thereafter as counsel can be heard for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgement granting the relief requested in the complaint to the extent of ordering the defendants to remove the special offender classification from the plaintiff's parole and personnel files and folders at the Eastern Correction facility at Napanoch, New York, and the Department of Correctional Services, and Parole Division of the State of New York (Parole Board), and ordering the defendants to show cause why the plaintiff should not be granted a new parole hearing before the Parole Board of the State of New York, and enjoining the defendants from future use of the special classification and the information upon which the classification was based at the second parole hearing before the Parole Board, and for other such relief as the court may deem just and proper in the premises.

Dated: December 30, 1975.

yours, etc.,

s/ Mike Williams

Mike Williams, pro se
Box 338, Ulster County
Napanoch, N.Y. 12458

To: Attorney General
Two World Trade Center
New York, N.Y. 10047

23a MOTION FOR SUMMARY JUDGMENT IN
FAVOR OF THE PLAINTIFF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL WILLIAMS,

Plaintiff,

-against-

BENJAMIN WARD, Commissioner of
Correctional services, and PAUL
REGAN, Chairman, New York State
Parole Board,

Defendants.

Pro se
(W.K.)

MOTION FOR SUMMARY JUDGEMENT
IN FAVOR OF THE PLAINTIFF

Rule 56 of the F.R.C.P.

BEST COPY AVAILABLE

SIRS:

Plaintiff, Michael Williams, Pro se, respectfully move this honorable court for an order pursuant to rule 56 of the Federal Rules of Civil Procedure for the granting the complaint and the relief sought, and for an order directing the defendants to show cause within 10 days why the plaintiff should not be granted a new parole hearing, and for other relief set forth in this motion for Summary judgement accordingly.

1. The plaintiff, Michael Williams, file a Civil rights suit, pursuant to 1983 42 United States Code for injunction enjoining the defendants from considering and using information received from the Justice of the Supreme court, Kings county, and the former Chief Probation officer of the State of New York department of Probation, county of Kings, dated, April, 1971, and August, 1974, accusing the plaintiff of being mentally disturbed and having a history of mental disorder as well as being dangerous for his future release into the community, based upon the alleged threat made by the plaintiff in 1971, to the Justice while confined at Auburn Correctional facility, at Auburn, New York, a maximum security facility. All of the facts of this complaint is set forth in the pro se complaint filed in this court previously.

2. The nature of this suit involves a challenge to the parole board authority in using information received from the justice of the Supreme court, Kings county and the Probation department at the parole hearing without first affording the prisoner prior written notice of the reasons and impartial hearing before using this information and affording the plaintiff the opportunity to respond information submitted.

The plaintiff maintains that he was denied this opportunity and this is not denied by the defendants or their attorney in this action.

24a MOTION FOR SUMMARY JUDGMENT IN FAVOR OF THE
PLAINTIFF (2)

3. There appear to be no real question of disputed facts involved in this suit and since, and since it is not denied that the plaintiff was not afforded prior written notice of the contemplated special offender classification based upon the information received from the justice of the supreme court, Kings county, and the department of Probation county of Kings and the nature of the plaintiff's crimes, to wit: Murder, second degree, the plaintiff see no reason why summary judgement should not be granted on the legal issues involved in this suit by the court.

4. Prior to the plaintiff's appearance before the parole board, on September 11, 1975, no written notice of reasons for the classification of special offender and impartial hearing held before an impartial hearing officer at the Eastern Correctional facility, and no determination made by the said officer regarding the special offender classification put on the plaintiff before the parole board. This fact in itself, constitutes a gross violation of the plaintiff's constitutional rights to procedure due process of law. The plaintiff had no personal knowledge that such a special classification had been put on his records before the parole board at the time he appeared before the parole board for release consideration, and denied the opportunity to contest the information supplied to the parole board and the Commissioner of Correctional services and placed in his personnel folder in Eastern Correctional facility and the central office of the department of Correctional services. Further, this special offender and case classification also deprived the plaintiff of the benefit of participating in the temporary release programs at the Eastern Correctional facility, such as furloughs, and work release. In fact, the plaintiff have been denied furloughs on two occasions upon the grounds of the nature of the offense, and work release activities at this facility, mainly because of the nature of the crimes. There being no evidence to support this classification during the entire 12 years that the plaintiff have been confined. The plaintiff only tried to participate in programs available to him as a lifer, which is very few available to lifers.

The main thrust of the plaintiff's activities while confined under the jurisdiction of the department of Correctional services is legal and prison reform activities, and this is the reason for the many civil rights litigations in this court and other district courts. Of course, the plaintiff have been active in filing state and Federal court litigations regarding his convictions and sentences which he is now serving.

25a MOTION FOR SUMMARY JUDGMENT IN FAVOR OF THE
PLAINTIFF
(3)

In view of the failure to accord the plaintiff due process notice and hearing, the plaintiff respectfully request an order granting Summary judgement to the extent of issuing an order to show cause why the plaintiff should not be granted a new parole hearing forthwith or why the plaintiff should not be ordered release on parole.

Since the plaintiff have been denied the prior written notice of the reasons for the special offender classification, and procedural due process hearing before a impartial hearing officer appointed by the Superintendent of the facility, and other safeguards afforded under the law and the many case laws involved herein, the mandatory injunction should be granted and the defendants be enjoined from using the information in the future parole hearing, and the information be duly removed from the plaintiff files at the Eastern Correctional facility, and the department of Correctional services (Central office), which includes the parole and personnel files, records, and folders.

Since the plaintiff have been prejudice by the past use of this information, the plaintiff respectfully prays for an order granting his freedom on parole supervision in view of the circumstances surrounding this case, seeing that he have been deprived of his constitutional rights to due process of law under the 5th and 14th Amendments to the United States Constitution.

Since the plaintiff feels that the parole board will not afford him fundamental fairness at a second parole hearing, and especially in the absence of legal representation, which is not permitted in parole release hearing in New York State, inherient prejudice will result against the plaintiff's interest, and under these circumstances, the motion for summary judgement should be granted to the extent of ordering the defendants to ~~show~~ show cause within 10 days why he should not be ordered release on parole supervision forthwith.

Note: Co-defendant, Mr. Robert Warner, have been released on parole supervision in October or November, 1975, from the ~~Eastern~~ New York State Correctional facility, and is now at liberty on parole.

In all respect, the motion for Summary judgement should be granted.

Sworn to before me this

30 day of December 1975.

Robert W. Collins

Notary Public

Robert W. Collins
Notary Public, State of New York
County of Ulster No. 4517489
Dec 30 1975

Respectfully submitted

S/ Mike Williams

Mike Williams, pro se
Box 338, Ulster county
Napanoch, N.Y. 12458

26a MEMORANDUM OF LAW

MEMORANDUM OF LAW

This memorandum of law is submitted in support of the annexed motion for summary judgement in this prisoner's pro se civil rights suit, filed pursuant to 1983. (1983, title 42 U.S.C.A.).

The plaintiff maintains in this suit that he have been deprived of his constitutional rights under the 5th, 6th, and 14th Amendment to the United States Constitution to prior written notice of the reasons for the special offender classification by the defendants in this action, an impartial hearing at the correctional facility prior to his parole board application for release on parole being considered by the parole board, and the denial of his several applications for temporary release programs, viz-Furloughs, and work release.

Therefore, he have been constitutionally deprived of his procedural due process right under the 14th Amendment to the United States Constitution, and his right secured under the 5th and 6th Amendments to the Constitution to prior notice and hearing.

Furthermore, the plaintiff alleges that certain adverse information was supplied to the parole board (Paul J. Regan, former Chairman, Parole Board), and the department of Correctional services (Benjamin Ward, Commissioner of Correction), without first according him the right to receive a proper copy of the information, and granting him the opportunity to respond to the information before this adverse information was considered by the parole board and the temporary release committee at Eastern Correctional facility, absence this constitutional safeguard, the information from the Justice of the Supreme court, Kings county, and the former Chief Probation officer, Department of Probation of Kings county, supplied in May, 1971, and August, 1974, and any other information unknown to the plaintiff at this time deprived the plaintiff of his procedural due process right and to confrontation. The decision of the parole board is invalid as a matter of constitutional law, and the plaintiff request summary judgement granting his complaint therein request. Further that the plaintiff is afforded a new parole hearing before the parole board of the State of New York, and that the special offender classification is removed from his parole and personnel files and records at the Eastern Correctional facility, and the Department of Correctional services. In support of the plaintiff's position, the plaintiff cites the recent decision of the U.S. Court of Appeals for the Second circuit of New York, in "Cardaropoli v. Norton, 353 F. 2d 990 (1975)."

The plaintiff feels that he have been discriminated against by the department of Correctional services and the parole board of the State of New York, defendants.

27a MEMORANDUM OF LAW

(2)

Memorandum of law

In *Catalano v. U.S.*, 383 F. supp. 346, 350, 351 (1974), wherein the district court held:

"In his depressed state of mind, he rationalizes that he has been a victim of unlawful practices including discrimination, corruption hearsay statements in his pre-sentence reports and rumor, gossip and untested information relayed to the officials by hostile confidential informers."

Also, see,

Stassi v. Hogan, 395 F. supp. 141 (1975)

Masiello v. Norton, 364 F. supp. 1133 (1973)

Allen v. Nelson, 354 F. supp. 505, Aff. 484

2d 960.

In view of the clear legal authorities herein cited, the plaintiff maintains that he was clearly denied his constitutional rights to procedural due process of law, and that the information and nature of the plaintiff's crimes were impermissible to classify him a special offender, and because he has been highly prejudiced as a result, the court should issue an order to show cause directing the defendants herein to show cause why he should be granted parole or a new parole hearing before the parole board, and further the plaintiff request the issuance of a mandatory injunction removing the information from the Justice of the Supreme court, Kings county and other information supplied to the defendants and their agents and officers be removed from his records and files. That no future action be taken against the plaintiff in regards to this information unless the procedural due process of law rights are accorded to him.

Since 30 days have expired since this court's order on December 8, 1975, and no hearing have been given or afforded to the plaintiff as mandated by the decisions herein cited in support, the plaintiff maintains that the defendants have no intention on affording the plaintiff the hearing as suggested by the court, and mandated by law.

Wherefore, the plaintiff respectfully prays that the requested relief be granted in all respect.

Dated: December 30, 1975.

Respectfully Submitted

S/ Mike Williams

Mike Williams, 13113-Pro se
Box 338, Ulster county
Napanoch, N.Y. 12458

28a AFFIDAVIT IN OPPOSITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL WILLIAMS,

Plaintiff,

-against-

BENJAMIN WARD, PAUL REGAN,

Defendants.

:

:

:

:

:

AFFIDAVIT IN
OPPOSITION

74 Civ. 3838 (W.K.)

-----X

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

BARBARA SHORE RESNICOFF, being duly sworn, deposes and
says:

1. I am an Assistant Attorney General in the office
of LOUIS J. LEFKOWITZ, Attorney General of the State of New York.
I submit this affidavit in opposition to plaintiff's motion for
summary judgment.

29a AFFIDAVIT IN OPPOSITION

2. Plaintiff is presently incarcerated in the Eastern Correctional Facility, Napanoch, New York, pursuant to a judgment of conviction rendered by the Supreme Court, Kings County (Cone, J.) on March 11, 1964. He was convicted on his plea of guilty to the crime of murder in the second degree for two separate incidents. These pleas covered the indictments for murder in the second degree for two separate incidents. These pleas covered the indictments for murder in the first degree for killing Gasper Colon (#19/1964) and for killing Charles Sumpter (#51/1964).

On May 27, 1964 plaintiff was sentenced to a term of twenty years to life on each judgment. The two sentences to be served concurrently.

On April 7, 1969, the Supreme Court, Kings County (Cowin, J.) ordered that the plaintiff be rendered nunc pro tunc upon the recent finding of guilt so that he would be afforded the opportunity to take an appeal. Plaintiff was resentedenced by the Supreme Court, Kings County (Cone, J.) on April 25, 1969 to two concurrent terms of twenty years to life nunc pro tunc as of May 27, 1974. The judgments and resentence were affirmed on appeal by the Appellate Division, 36 A D 2d 690 (2d Dept. 1971) and leave to appeal denied by the Court of Appeals on April 13, 1971.*

3. Plaintiff has filed several almost identical

habeas corpus petitions in the various District Courts of this State attacking his conviction, all of which have been denied. United States ex rel. Williams, 430 F. 2d 1284 (2d Cir. 1970); United States ex rel. Williams v. Patterson, 74 Civ. 6 (S.D.N.Y., March 28, 1974), 73-C-542, E.D.N.Y., dated 6/21/73; United States ex rel. Williams v. Henderson, 71-C-1448, E.D.N.Y. dated 6/14/72; United States ex rel. Williams v. Henderson, 71-C-692, E.D.N.Y. dated 6/16/71; United States ex rel. Williams v. Patterson, 74 Civ. 1260, S.D.N.Y., 1/2/75, (Judge Griesa in his memorandum stated "It is time for these fruitless habeas corpus petitions by petitioner to stop.")

4. Plaintiff originated the present complaint by asking for removal of certain letters from his file. He, at this point, apparently amends his complaint to ask for summary relief by immediate parole release. He now claims that he had an unfair parole release hearing on September 11, 1975, without having an opportunity to learn he had received special offender status, nor refute the status.

* In accordance with Chapter 343 of the Laws of 1975 the minimums were reduced to 8 years, 4 months.

5. If his request is indeed for release on parole, his application should be treated as a habeas corpus petition. Preiser v. Rodriguez, 411 U.S. 475. He must, therefore, show the requirements of exhaustion of state remedies before he can ask for such release in this case. 42 U.S.C. 2254.

6. Plaintiff received a full and fair hearing at the Parole Board. The minutes of that hearing are attached hereto as Exhibit A. He was asked to give an explanation of the original charges and to explain his former drinking problem. At the hearing he told the Board that he felt a High School Equivalency test was "just a piece of paper," and therefore did not attempt to get one. He also did not participate in the group therapy programs available at Napanoch.

33a AFFIDAVIT IN OPPOSITION

When asked about the two crimes of murder, he denied committing them. The Parole Board evaluated his record and denied parole on the 1) basis of the violent and vicious nature of the crimes 2) lack of participation in available treatment programs 3) lack of utilization of available programs to prepare for parole release. This list was given to plaintiff (Exhibit B). Plaintiff wrote to the Board of Parole for reconsideration, and he received two letters from Frank L. Caldwell, Acting Chairman of the Board of Parole, reviewing and approving the Parole Board's action (Exhibit C).

7. It should be noted that plaintiff is pressing his claims against the Parole Board in the United States District Court, Eastern District of New York, 75-C-1948. Plaintiff submitted that complaint prior to his motion in this Court.

8. The Second Circuit has recently held that written reasons and facts for denial of parole are sufficient to protect

33x a

AFFIDAVIT

a prisoner's rights. Haymes v. Regan, 525 F. 2d 540 (2d Cir. 1975). See also United States ex rel. Johnson v. Chairman, New York State Board of Parole, 500 F. 2d 925, 934 (2d Cir.) vacated and remanded as moot sub nom; Regan v. Johnson, 419 U.S. 1015 (1974). The Parole Board has complied with these decisions. Plaintiff was accorded a hearing, a chance to explain his position and given the reasons for denial of parole, a denial within the discretion of the Parole Board.

WHEREFORE, summary judgment should be denied.

BARBARA SHORE RESNICOFF

Sworn to before me this
29th day of January, 1976

Assistant Attorney General
of the State of New York

(1) CASE OF: MICHAEL WILLIAMS
PIERRE

IIS-1027872X

HAP-13116

BEST COPY AVAILABLE

Q. Michael Williams?
A. Yes.

Q. Have a seat, sir. Mr. Williams, you are serving two concurrent terms for murder second on a plea of guilty---20 years to Natural Life. With the change in the law, the last one being chapter 343 of the laws of 1975, now your release consideration date from 5/77 to today's date and therefore you are appearing before the parole board for parole release consideration at this time.

A. Yes.

Q. I have reviewed the record and have found many things where you have been occupying your time, that there are some things I believe it would be helpful to us in making the decision that we need to clarify and in looking at the record and discuss it with you at this time in order for us to make a fair and equitable decision. It's necessary to look at the past, the present, and the future. The indication would be the report of the crimes shows to be vicious and senseless crimes, violent and brutal and also there is an indication of a life style with drinking which apparently was causing you problems at that point. We would like to hear from you and how you regard your involvement in these crimes in your past life style to begin with.

A. First of all I didn't commit the crimes as I been persistently claiming, did not commit the crimes and as far as my drinking problem, I had a drinking problem and I was very young at the time, living with my mother on welfare, the product of a broken home, I had to grow up in the street. When you grow up in the street in the ghetto it's dog eat dog to survive.

Q. The one thing that we need, that's why I said we need clarification, the crimes that you indicate you did not commit, we are faced as you are with the record, that you plead guilty and that you were serving time for those crimes and I want to make sure we have a complete understanding of that and that's why I say it's important to us and to you that we do have an understanding. We weren't there, we don't know if you committed the crimes or not. We have to go on the record and it's your record. Now, go ahead.

A. Let me start from the beginning, when I was arrested I was arrested for a robbery charge---me and another guy. I was taken to the precinct and beat up brutally by the police officers which produced a confession, to me the only crime which I didn't commit. I was held in custody at the time twenty hours, during this time I was viciously beaten and as a result produced the confession for these crimes. Now, when I was arraigned and indicted I pleaded guilty because of threat of the death penalty. At that time I had no prior record, no previous record with the law, I had nothing. This is the reason I plead guilty because I was told by my attorney that I would get the death penalty if I went to trial and in view of the confessions at the time there was no legal procedure to review, to relieve the confession which made me more scared.

Q. In the second murder, Michael, you had a codefendant. Do you know what happened to him.

A. He got the same, he got 20 to life.

Q. Alright, go ahead.

A. As far as that I was concerned because I was made a promise I wouldn't get the chair, I would get 20 to Life, so I took the plea and I was told if I did go to trial and ultimately I've been convicted on the confessions and get the death penalty. That was my primary reason for taking the plea, no

- A. I have actions back from federal court on jury trial in federal court which I lost because the jury felt my case was unclear I wasn't beating and there was no proof of that issue and did not consider my innocence which the jury wouldn't accept because it was a criminal case it wasn't there to decide my guilt. 35a EXHIBIT A
- Q. Knowing that and you have indicated yourself that drinking was one of the problems, what have you done since having been incarcerated over these years with that particular problem. Have you been involved in any of the program to deal with the problem?

Michael Williams

pg 2

- A. Basically, I believe as far as AA is concerned I was involved for a brief period of time with AA in this institution and I was involved with AA programs, voluntary AA programs which we got together and that time as they didn't have one in Auburn, I was in Auburn State Prison, they didn't have many programs at that time, this was 1966, and me and a couple of guys got together, we held AA meetings in the yard, and as far as I feel AA is nothing but a basically therapy, it's like a drug rehabilitation and like we get together, you know, do this, you don't have to sit up in the classroom to drink coffee, eat doughnuts to determine whether you are going to drink or not when you get out of here. I made my mind up not to drink anymore.
- Q. But you haven't been active in any of the programs within this institution regarding this problem?
- A. Like I said I was in the AA program when it first started here.
- Q. How long you participate, for what period of time did you participate?
- A. A couple of weeks, but at the time it wasn't off the ground yet, recently got off the ground.
- Q. How about vocational pursuits during the time you've been incarcerated?
- A. I don't understand?
- Q. Vocational training, preparing yourself for future employment because your past record, you were rather young and you didn't have any employment record and one of the criteria in releasing of course is that you have some employable skill and there is a job available because this is one of the strongest supports that a man can have in the street to have work?
- A. Well, as far as my vocational---particular vocational training like marketable out there today, I have worked when I was in Auburn, I worked in shops I worked in the shop where we operated machines and made blanket materials.
- Q. That was in the weave shop.
- A. Yes sir.
- Q. About a year.
- A. I was in that shop from 1964, August 1964 to 1968.
- Q. Well, the record, I think the record reflects about a year, did you gain any employable skills during that period of time you feel.
- A. No, because the machines in the shop were very very outdated.
- Q. I see.
- A. There

A. There was nothing to gain anything in that respect, training very little.

Q. In the educational area, Michael, have you pursued getting a high school diploma--equivalency diploma or any type of formal educational training within the institution?

A. I have no objections against high school equivalency except to me it's just a piece of paper, it doesn't mean you are qualified for anything other than academic. I feel I have achieved high school status on my own, I am self taught, everything I learned, I learned on my own with the help of other inmates.

Q. Have you tested this by taking the exam?

A. No, I haven't taken the exam.

Q. Alright.

A. But I have achieved this status, I am in business school right now, I've been in school since December last year. In school I am in pre-college business law course which you must have the equivalency of high school education to get into this class and I am one of the top students in this class.

Q. Alright, have you done anything in the area of personal development regarding all the problems that you indicated earlier having been in the ghetto area in the expressions and so on, have you done anything with counselling programs, not just counselling programs, psycho-therapy programs, have you gone on your own to find out if there is any problem that you have within that there is that can be supported, recognized, and worked with through the

Michael Williams

pg 3

A. Well, I never participated in a group therapy class. I have seen, I never seen the psychiatrist, the psychiatrist never called me for the longest period of time I was in Auburn. After I came here 1973 I seen the psychiatrist here Mr. Lennone, he interviewed me, I think I seen him the last time for the purpose of the parole board, this is my third time seeing him. He indicated to me there was no need for therapy or anything of this nature so like I said no need on my behalf to get involved in something I don't feel in necessary. I feel I have conquered my own problem on my own, dealing with inmates and dealing with people in the community and I don't feel as far as any psychologist I know different, as far as I am concerned I don't feel there is any need for me, I feel I have conquered my problems on my own.

Q. Alright, now I have asked all the questions that I have, the panel, you have any further questions.

GILBRIDE

I don't have any questions.

JONES

I don't have any.

Q. Now, we would like to give you an opportunity to ask any questions or make any statement that you feel is important to you that we have not discussed that you would like to have us consider here today.

A. All I have to say, I feel that I personally achieved a lot since my incarceration which is nearly twelve years. During this period of time I made strong contact with people in the community. I don't know if the record reflects I am a jail house lawyer.

Q. It does.

A. I am a para-professional with the New York State Department of Corrections.

37a EXHIBIT A

4.
A.

I am a para-professional with the National Lawyers Guild and I am also a member with the National Association of Justice and a member of the American Civil Liberties Union and various other prison community groups and associations in the community. I am also the cofounder of the inmate group in this institution of Lifers for Legislative Change and reform, this is a group of inmates with long sentences as life and other long sentences, we got together, we support various legislative passages in reference to conditions of prisons for lifers which is one of the main causes I am here today, the law that was passed. We also work in areas of community relations, bettering ourselves while in prison because we have very few programs---particularly release programs which I feel personally is necessary for adjustment to go back into the community and especially with a man serving a long time in prison like some of the activities being afforded the others, I've been struggling with this, I am very serious about this, I intend to get involved in some respects in the business law field when I am in the community, that's when I go out.

Q. Michael, in discussing those interests and your work in these areas I also recognize that your involvement in the law library here.

A. Yes.

Q. Which you didn't mention, but it's in the record. Now, we have it on this record. However, Are you being practical and fair to yourself in that you have these interests and goals and yet there is a need, do you see it this way or not, there is a need for education--academic education in order for you to establish the foundation to meet your goals. You have fine goals, you are articulate, but in order to, you know, when you go out for a job whether it's a law clerk job or whatever, your educational background will be reviewed even though you may have a lot of knowledge which you have gained through self studying and yourself, in other words to meet the requirements in criteria for job employment, the basics will be missing, do you realize this?

A. I don't feel the basics are missing, like I told you, I personally think I achieved all of this as far as like I think what you are getting at is the fact that I don't have, I am not formally a high school student.

Q. Are you taking any college courses to prepare yourself for this type of work?

A. As far as I am concerned it's---not for me, it would be of no use to what I want to get into, to what I want to get into, it's law involved. I was offered several jobs as counselors with youth, I was offered jobs with legal agencies they are going to put me in job placement, I feel that for them to settle on

Michael Williams

pg 4

A. me, all the facts were given to these people offering me this employment. I told him I didn't have a high school diploma, if it means that much---all the factors were presented to them, they settled on me because of accepting me because of my self study knowledge, now I studied, I studied personally on my own and a lot of fields covered by high school diploma and college and I studied myself and been tested by teachers, so I feel this is sufficient for me to chieve my goals in the community.

Q. Okay, I have no further questions. Thank you very much.

PIERRO

REASONS FOR DENIAL OF PAROLE.

The violent and vicious nature of the crimes. Institutional reports indicate that you might benefit from the treatment that's available to you in this institution and in which you have not participated and which we feel is necessary for your rehabilitation program. There is no indication that you have utilized available programs to prepare yourself for parole release at this time. Hold two years with psych. report.

GILBRIDE

Agree.

JONES

Agreed.

DECISION

PAROLE DENIED: HOLD TWO YEARS W/PSYCH 9/77

EASTERN CP -- September 11, 1975

GILBRIDE, JONES, PIERRO

PJS/rw

REASONS FOR DENIAL OF PAROLE

NAME Michael Williams

NUMBER NAP-13116

On 9/11/75

the New York State Board of Parole. You will again be considered for parole in September 1977 by a three member panel of the New York State Board of Parole.

After a careful review of your record and after your personal appearance before a three member panel of the New York State Board of Parole, you have been denied release on parole for the following reasons:

"Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties assigned in prison, but only if the Board of Parole is of opinion that there is reasonable probability that if such prisoner is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society. . ." (Correction Law § 213)

The members of the panel are of the unanimous opinion that there is reasonable probability that if you are released you will not live and remain at liberty without violating the law and that your release at this time is incompatible with the welfare of society.

While your entire record was reviewed, the following are the factors upon which the denial of parole at this time are based:

The violent and vicious nature of the crimes.

Institutional reports indicate that you may benefit from the treatment which is available to you at this institution and in which you have not participated and which we feel is necessary for your rehabilitation.

There is no indication that you have utilized available programs to prepare yourself for parole release at this time.

If you have any questions regarding the reasons for denial please contact your Parole Officer.

J. KEELEY
Senior Parole Officer

Original - Inmate
Copy 1 - Institutional Parole File
Copy 2 - Central Files
Copy 3 - Service Unit File Folder

AB:rw

bcc: SPO Keeley - Napanoch CF

EXHIBIT C

October 28, 1975

Mr. Michael Williams, #13116
IIS-1027872X
Napanoch Correctional Facility
Napanoch, New York

Dear Mr. Williams:

I am taking this opportunity to reply to your letter dated October 15, 1975. In addition, Commissioner Ward and Commissioner Elvin have asked me to give my personal attention and response to the letters written to them, dated October 23, 1975.

After reading your letter I reviewed your records. Let me advise you that the Parole Board is not responsible for the conviction and sentencing of an individual. However, when an individual comes to a New York State Correctional Facility with a conviction for a serious offense, the Parole Board must treat this individual according to the sentence received from the court of jurisdiction.

When an individual appears before the Parole Board for release consideration, the Parole Board takes into consideration the individuals past pattern of criminal behavior, present institutional adjustment; and future potentials in the community. In your case, I feel that the decision rendered by the Parole Board was appropriate based on the seriousness of the crime for which you were convicted. Should you be able to reverse the decision of the court of jurisdiction by appeal, the Parole Board will again act according to the directions of that court.

While you may disagree with the decision of the Parole Board, nevertheless, the Parole Board acted appropriately in rendering a decision they felt would be in your best interest and the best interest of the welfare of the community.

In your correspondence dated October 23, 1975 you again charge discrimination, abusive discretion and arbitrary capricious action on the part of the Parole Board in denying your release. I must take exception to your comments as I feel the Parole Board, based on the facts presented to them acted in a fair and impartial manner. Therefore, the request for reconsideration of your Parole application cannot be entertained at this time and you will remain scheduled for the September, 1977 Parole Board.

Sincerely,

Frank J. Caldwell

Exhibit C, P2

AB:rw

bcc; SPO Keeley - Napanoch

November 21, 1975

Mr. Michael Williams, #13116
IIS-1027872
Eastern Correctional Facility
Napanoch, New York

Dear Mr. Williams:

I am again writing to you in response to your correspondence dated October 31, 1975. In addition, your correspondence to Commissioner Benjamin Ward has been forwarded to my office for reply.

I wish to again indicate to you that the decision rendered by the Parole Board in denying you^s Parole release was appropriate as I indicated to you the Parole Board not only considers a person's past pattern of criminal behavior, but also his institutional adjustment and future potentials in the community. Based on all of the above the reviewing commissioners felt that if released you would not remain at liberty without violating the law and that your release would not be compatible with the welfare of society.

As I indicated to you in my letter dated October 28, 1975, if you are not guilty of the present offense you should bring this matter to the attention of the court of jurisdiction in the form of an appeal. If your appeal is successful, the Parole Board will again act according to the directions of the court of jurisdiction. Until that time the decision of the Parole Board will remain in effect.

Contrary to what you may believe it is the Parole Board's hope only that justice be served. The Board's actions thus far have been in the best interest of all concerned.

Sincerely,

Frank L. Caldwell
Acting Chairman
Board of Parole

42a AFFIDAVIT IN OPPOSITION

a prisoner's rights. Haymes v. Regan, 525 F. 2d 540 (2d Cir. 1975). See also United States ex rel. Johnson v. Chairman, New York State Board of Parole, 500 F. 2d 925, 934 (2d Cir.) vacated and remanded as moot sub nom; Regan v. Johnson, 419 U.S. 1015 (1974). The Parole Board has complied with these decisions. Plaintiff was accorded a hearing, a chance to explain his position and given the reasons for denial of parole, a denial within the discretion of the Parole Board.

WHEREFORE, summary judgment should be denied.

BARBARA SHORE RESNICOFF

Sworn to before me this
29th day of January, 1976

Assistant Attorney General
of the State of New York

43a AFFIDAVIT OF FACTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL WILLIAMS,

Plaintiff,

--against--

BENJAMIN WARD, AND PAUL REGAN,

N.Y. BOARD OF PAROLE,

Defendants.

75-Civ. 3838(pro se)

(Knapp, J.)

AFFIDAVIT OF FACTS

STATE OF NEW YORK)
COUNTY OF ULSTER) S.S.:

MICHAEL WILLIAMS, being duly sworn, deposes and says:

1. That he is the plaintiff in this Civil rights action filed in this court pursuant to 1983, 42 United States Code challenging the determinations and the decisions of the parole board of the State of New York, and because the plaintiff have been deprived of his constitutional rights to procedural due process of law in accordance with the recent decision of the United States Court of Appeals for the Second Circuit of New York in Cardaropoli v. Norton, 523 F. 2d 990(1975).
2. That this affidavit of facts is being submitted in further support of the Civil rights action to anull the determination of the parole board, and for the immediate removal of the false information in my Correctional files in the custody of the department of Correctional services and the parole board.
3. Since the plaintiff received the last pleading from the Attorney General of the State of New York in this action, and the response pleadings filed by the plaintiff in this court, the following occurrence have taken place, and the plaintiff verily believes that if the court is made aware of these things it will give the court a fuller understanding of the complaint filed in this court. I am sure that the Attorney General would not disclose this material information to the court because of its very nature in the plaintiff's case.

4. Since the plaintiff was denied parole and held for two additional years by the defendant parole board, the plaintiff applied for participation in the work release program at the Eastern Correctional facility on 10/8/75, and this application was first approved by the Temporary release committee at the facility on 11/6/75, and signed by Mr. J.J. Keeley, Chairman.

On 11/19/75, I wrote the Chairman a note to ascertain when I would be placed on a job, and was advised in writing that the application for work release which was approved was a mistake and therefore, revoked because I had too much time left to appear before the parole board again.

Subsequently, I wrote a letter for reconsideration bringing to his attention that another inmate of this facility was participating in the program with (18) months to repetition for parole consideration.

No decision was ever rendered on this request for reconsideration by the temporary release committee.

On 12/12/75, plaintiff applied for work release participation again, and after a two month delay, the application was again disapproved by the new Chairman of the temporary release committee for the following reasons:

1. Assaultive nature of present offenses.
2. Lack of meaningful work and educational program.

5. Because the disposition of the temporary release committee, and especially the alleged lack of meaningful work and educational program, the plaintiff again applied for reconsideration by the temporary release committee on the following day, and to date no decision have been made in this connection by the committee.

The plaintiff subsequently, filed a grievance against the temporary release committee with the Inmates grievance committee at the facility upon the basis that the decision denying participation in the work release program was based upon personal prejudice of the temporary release committee by the use of the plaintiff's offenses for which he have served nearly 12½ years in prison, and have reform his behavior pattern and anti-social conduct, and that the decision was factually incorrect in view of the plaintiff's accomplishments in the way of educational achievements and his past and present record of work in the institution industry shops. A hearing was held before the Grievance committee at the facility, and the plaintiff was not present at the hearing, having waived his appearance before the committee for a formal hearing, nevertheless, certain information was supplied to the committee regarding the plaintiff's accomplishments for review of the committee and their consideration.

45a AFFIDAVIT OF FACTS

(3)

I understand that the presence of the deputy Superintendent for program services and the Chairman of the temporary release program, Mr. Hannon and Mr. Kimelman was present at the formal hearing and interviewed by the Grievance committee regarding my case and the disapproval of the application for work release participation. After the hearing before the grievance committee, it was conceded that the temporary release committee made a improper decision, and it was ordered by the Deputy Superintendent Kimelman that my case be reconsidered by the temporary release committee, and that I be given a new hearing before said committee on my new application.

6. Prior to the reconsideration and new hearing on my application for work release participation, plaintiff was called for a interview by Mr. Hannon, Chairman of the temporary release committee, and during this interview I was informed that I would not be given work release program because of the lenght of my sentences(Life imprisonment), and assaultive offenses.

I brought to the attention of the Chairman that there were other inmates presently participating in the work release and furlough programs of this facility and other facility across the State of New York with life sentences and charges of assaultive nature, and he told me to have the court give me a work release program and furlough, and I walked out of the room at this point. A Correctional sgt. was present at the time of this interview, who is a member of the Grievance committee.

The application for reconsideration is presently pending before the temporary release committee for a new decision and the plaintiff verily believes that this application will also be disapproved in view of the feelings of the Chairman of the temporary release committee and its members as he expressed to me at the interview conducted on 12th of March, 1976.

The plaintiff believes further that the real basis for the denial of these reform programs is because of the false information in his files at the facility for which he have not been given a procedural due process hearing on the truth thereof as directed under the Special offender classification mandates of the United States Court of Appeals for the second circuit of New York herein mentioned

The defendants and their agents have had sufficient opportunity to afford the plaintiff this hearing, nevertheless, no hearing have been made in this case, and the plaintiff is still being harmed as a result of this information which he have not been given the opportunity to rebut with the assistance of counsel or counsel substitute as required under the law.

46a AFFIDAVIT OF FACTS

(4)

7. In addition, the plaintiff have been denied furlough home visitation program by the temporary release committee on 11/26/75, and the basis for the denial of the application for furlough was as follows:

"Nature of Offense"

This decision was signed by former Chairman, Mr. J.J. Keeley, and the former Superintendent Patterson(now retired).

Prior to the above denial of the furlough application, the plaintiff was denied furlough leave for the purpose of maintaining family ties on the basis of :

"Nature of Offense"

This decision was dated and rendered on 7/14/75, and signed by Mr. Hannon, Now again Chairman of the temporary release committee, and the former Superintendent Patterson, and the plaintiff appealed this decision to the Inspector General of the department of Correctional services which resulted in a full investigation.

Subsequently, the decision of the temporary release committee was affirmed by the Director for Community services in Albany, New York.

8. The plaintiff applied for a transfer to the Albion residence preparation center, at Albion, New York(Up-state New York)as a law clerk of the law library and also to take advance of the new programs at that facility, including the work release program, and on 1/30/76, plaintiff was informed by a brief note from his counsellor Mr. Gorelick here at the facility that the transfer was disapproved by the office of the Director of community services and movement of the lenght of his sentence.. It should be noted that this transfer request was based upon a prior request made by the plaintiff to the Superintendent of the Albion residence center and accepted in the facility on a informal basis as a law clerk.

Nothing was ever said that the plaintiff had too much time to be accepted at that treatment facility by the office of the Superintendent who wrote me a letter of acceptance and advised me to apply for the transfer.

9. Presently, the plaintiff have a request for another transfer to the Tanconic residence treatment center, a minimum security facility, and the plaintiff verily believes that this transfer will also be disapproved by the office of Classification and movement in Albany, New York, all because of the false information in his files

67a AFFIDAVIT OF FACTS

(5)

possessed by the department of Correctional services and the parole board, and which he was denied due process of law relative thereto.

10. The plaintiff recently took a writer's test to ascertain his ability to become a professional writer, and the result of this test shows that the plaintiff have the potential to become a successful writer with the proper training.

It was indicated by the Writers Institute, Mamaroneck, New York, and the report written on the basis of the writing Aptitude test that the plaintiff was accepted in this school because of the nature ability to become a successful writer.

It costs \$309.00 cash for attending this correspondence school, nevertheless, since the plaintiff is indigent, and only earn .50¢ per day in his prison labor, he could afford to attend this school for proper instructions and training.

The plaintiff received a letter from the Director of the school informing him that he had been accepted into the school, but must pay the costs of attending this school, and for material.

In view of the foregoing, the plaintiff wrote a letter to the Commissioner of Correctional services, and the Deputy Commissioner for program services requesting assistance in this nature, and was informed that there is no money available for use to attend this school, even though, there is money for other educational and college programs which are available to inmates of this facility.

Furthermore, the plaintiff received a letter from the Director of Education for the department of Correctional services and had a interview with the Director of Education at the facility, and both officials advised me that there was no money for the educational programs that I requested.

There is no other alternative writing programs available in the words of the Director of Education at this facility, Mr. Perlman.

Therefore, once again, I am being denied the opportunity to further my goals in a professional area of writing and the plaintiff don't believe that there is no money available for him to attend this school, and it all leads back to the false information supplied to the defendants in this action and which are in my files at the facility and the Central office for the department of Correctional services, and the plaintiff is being prejudice whatever way he turns while under the custody of the defendants. The plaintiff is being denied rehabilitation by the defendants in this action.

All of the education that the plaintiff have achieved is due to his own ability to learn, and not because of any assistance from the defendants or their agents.

Since the plaintiff is determine to gain educational opprtunity and become a better and productive member of society again, he will not let the denied opportunities -

48a AFFIDAVIT OF FACTS

(6)

by the defendants prevent him from continuing his drive for education, and training into a successful occupational career.

11. For further information relative to the plaintiff in this action that the defendants and their attorneys did not disclose to this court in this action, the plaintiff further set forth the following:

12. Plaintiff is a jailhouse lawyer with over 12 years experience.

Plaintiff is a Para-professional and Para-legal member of the National lawyers guild, American Civil Liberties Union and New York Civil Liberties Union as well a member of the Association for Justice, Inc., and 7th Step Foundation, Inc. and many other community based organizations, legal and prison reform.

13. The plaintiff is a graduate of Business law, and community relation and services.

14. Plaintiff is a graduate of Legal Research course by the West Publishing Co., St. Paul, Minn.

15. Plaintiff is a graduate from Bible study courses, and have received two certificates. He is presently participating in a college bible study course in Hollywood, California, and is a bible student.

16. The plaintiff is a law clerk, law librarian, and brief writer with considerable experience and training.

These are but a few of the plaintiff's accomplishments since imprisoned and not brought to the attention of this court by the attorney general office or the defendants in their pleadings, and the plaintiff believes that the court should have all of this information at hand when a decision is made in this action.

Respectfully submitted

Sworn to before me this

22 day of March 1976.

Alvin C. Carlson

Notary Public

Alvin C. Carlson

Notary Public, State of New York
Residing in the County of Ulster
Commission Expires Mar. 30, 19... 4615518

S/ Mike Williams

Mike Williams, pro se
Box 338, Ulster county
Napamoch, N.Y. 12458

-----X

2

2

2

•

2

.....X

-x

Plaintiff pro se in this prisoner's rights suit brought pursuant to 42 U.S.C. §1983 has moved for summary judgment granting the relief requested in the complaint: to wit, expunction from his institutional files of any material classifying him as mentally disturbed and an order directing the defendants to grant him a second, "untainted" parole release hearing. 1/ This motion was apparently induced by our Memorandum and Order dated December 8, 1975 denying defendants' motion to dismiss the complaint for failure to state a claim. In that Order, we declined - on the basis of Cardaropoli v. Norton (2d Cir. 1975) 523 F.2d 990 - to dismiss plaintiff's claim that inclusion in his institutional files of certain material

50a MEMORANDUM AND ORDER

classifying him as mentally disturbed, of which he had been given no prior notice or opportunity to contest its factual basis, severely limited his eligibility for parole and other cognizable benefits. ^{2/}

On the present state of the record, the Court is ill-equipped to entertain the present motion:

1. No Local Rule 9(g) statements have been filed by either party. Given the plaintiff's pro se status, the oversight on his part is, of course, excused. The same cannot be said for the New York State Attorney General. A "short and concise statement" from that office of "the material facts as to which it is contended that there exists a genuine issue to be tried" would have aided the Court in its determination of the instant motion for summary judgment, as would have Affidavits of Fact in opposition thereto.
2. The Affidavit in Opposition submitted by defendants - sworn to by an Assistant Attorney General - does not set forth any relevant facts and - as a surrogate memorandum of law - entirely misses the issue raised by the complaint in this case.
3. No facts, in affidavit form or otherwise, have been presented to the Court by the defendants in opposition to plaintiff's specific due process claims: namely, the exact nature of the allegedly adverse material in plaintiff's files; the basis therefor; the circumstances surrounding its inclusion in his files; the effect, if any, that this material may have had on the conditions of his confinement, etc, etc.

Consequently, it is the ORDER of this Court that within twenty (20) days of the date of this Order, the defendants are directed to do the following:

51a MEMORANDUM AND ORDER

- a) File the appropriate R. 9(g) statement and any affidavits in support thereof which they deem important.^{3/}
- b) Turn over to the Court for in camera inspection all material in plaintiff's institutional files which contain any reference to his alleged mental instability, including the alleged threats.
- c) File a Memorandum of Law addressed to the issues raised in the complaint, as defined in the Memorandum and Order of the Court dated December 8, 1975.

On the basis of the affidavits and materials thus presented, the Court will then determine the necessity of conducting an evidentiary hearing similar in nature to that conducted by Judge Zampano in Catalano v. United States (D. Conn. 1974) 383 F.Supp. 346.

SO ORDERED.

Dated: New York, New York

April 7, 1976.

~~WHITMAN KNAPP~~

WHITMAN KNAPP, U.S.D.J.

FOOTNOTES

1/

Alternatively, plaintiff seeks immediate release on parole, a form of relief not cognizable under §1983. Preiser v. Rodriguez (1973) 411 U.S. 475. Rather than dismiss plaintiff's complaint as sounding in habeas corpus - thus calling into play the requirement of pleading exhaustion of state remedies - we shall ignore the request for immediate release and focus instead on the other forms of relief demanded by plaintiff.

2/

See, also, Lombard v. The Bd. of Educ. of the City of New York (2d Cir. 1974) 502 F.2d 631; Velger v. Cawley (2d Cir. 1975) _____ F.2d _____ (Docket No. 75-7042, 9/9/75); Stassi v. Hogan (N.D. Ga. 1975) 395 F.Supp. 141; Masiello v. Norton (D. Conn. 1973) 364 F.Supp. 1133; Allen v. Nelson (N.D. Calif. 1973) 354 F.Supp. 505, aff'd, 484 F.2d 960 (9th Cir.)

3/

In the event the Court deems a hearing to be in order, the defendants will be limited in their proof to matters raised in these affidavits.

53 a MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

MICHAEL WILLIAMS,

:

Plaintiff,

:

- against -

:

MEMORANDUM AND ORDER

BENJAMIN WARD, PAUL REGAN,

:

75 Civ. 3838

Defendants.

:

-----x

KNAPP, D.J.

On November 12, 1975, the defendants moved to dismiss the complaint for failure to state a claim, which motion was denied by Memorandum and Order dated December 8, 1975. On the basis of that opinion, in which we referred to the recent decision in Cardaropoli v. Norton (2d Cir. 1975) 523 F.2d 990, the prisoner on December 30, 1975 moved for summary judgment granting the relief requested: namely, removal from his parole files of any and all material classifying him as mentally disturbed and an order directing the defendants to grant him a second, "untainted" parole release hearing. Upon the defendants' failure to timely respond to said motion, the Court wrote a personal letter to the Attorney General, Louis Lefkowitz, requesting a response. On January 29, 1976, the Assistant

54a MEMORANDUM AND ORDER

Attorney General assigned to the case filed an Affidavit in Opposition which was inadequate. On March 31, 1976, the Court requested in writing that the Attorney General provide it with copies of all the papers filed in an unrelated action of plaintiff's pending in the Eastern District. On April 7, 1976, we issued a Memorandum and Order noting the numerous deficiencies in the defendants' Affidavit in Opposition and ordering the Attorney General within twenty days of the date of the decision, to:

- a) File the appropriate R. 9(g) statement and any affidavits in support thereof which they deem important.
- b) Turn over to the Court for in camera inspection all material in plaintiff's institutional files which contain any reference to his alleged mental instability, including the alleged threats.
- c) File a Memorandum of Law addressed to the issues raised in the complaint, as defined in the Memorandum and Order of the Court dated December 8, 1975.

To date, that office has failed to comply in any respect with this Order - issued two months ago.

The defendants thus being in default, plaintiff's motion for summary judgment is granted. The defendants are hereby ORDERED TO:

1. Forthwith delete all materials in plaintiff's parole file classifying him as mentally disturbed.
2. Forthwith grant plaintiff a new release hearing, at which none of such material is to be considered.
3. Notify the Court immediately in the form of an

55a MEMORANDUM AND ORDER

Affidavit when and how these two actions are completed.

SO ORDERED.

Dated: New York, New York

June 9, 1976.

WHITMAN KNAPP, U.S.D.J.

UNITED STATES DISTRICT COURT 56a NOTICE OF MOTION
SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL WILLIAMS,

Plaintiff,

75 Civ. 3838 WK

-against-

BENJAMIN WARD, PAUL REGAN,

NOTICE OF MOTION

Defendants.
-----X

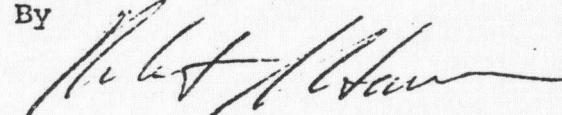
S I R :

PLEASE TAKE NOTICE, upon the annexed affidavit of ROBERT S. HAMMER, Esq., sworn to July 8, 1976, and the exhibits annexed thereto, and upon all the pleadings and prior proceedings had herein, the undersigned will move this Court, before HON. WHITMAN KNAPP, U. S. District Judge, Room 1105, U. S. Courthouse, Foley Square, New York, N. Y., on July 28, 1976, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, for an order pursuant to Fed.R.Civ.P., Rule 55(c) vacating the grant of summary judgment to plaintiff, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, N. Y.
July 8, 1976

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of
the State of New York
Attorney for Defendants
By



ROBERT S. HAMMER
Assistant Attorney General
Office & P.O. Address:
Two World Trade Center
New York, N. Y. 10047
Tel. No. 488-3394

TO: Mr. MICHAEL WILLIAMS
Plaintiff, pro se
AK-004
Arthur Kill Correc-
tional Facility
2911 Arthur Kill Road
Staten Island, N. Y. 10309

57a AFFIDAVIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
MICHAEL WILLIAMS,

Plaintiff,

75 Civ. 3838 WK

-against-

BENJAMIN WARD, PAUL REGAN,

AFFIDAVIT

Defendants.
-----x

STATE OF NEW YORK)
 :SS.:
COUNTY OF NEW YORK)

ROBERT S. HAMMER, being duly sworn, deposes and
says:

I am an Assistant Attorney General in the office of
LOUIS J. LEFKOWITZ, Attorney General of the State of New York,
attorney for defendants herein. I am fully familiar with the
facts of this case and I make this affidavit in support of
defendants' motion pursuant to Federal Rules of Civil Procedure,
Rule 55(c) to vacate the grant of summary judgment to plaintiff.

58a AFFIDAVIT

This is an action brought under the Civil Rights Laws seeking to delete material from plaintiff's parole file classifying him as mentally disturbed and to require a parole hearing at which such material would not be considered.

I assumed responsibility for this case on or about April 12, 1976, upon the departure from the office of Assistant Attorney General Barbara Resnicoff, several days after the Court issued its directive to this office to supply additional material for consideration on plaintiff's motion for summary judgment. In addition to starting with less than the originally allotted time, it was necessary for me to familiarize myself with the

59a AFFIDAVIT

instant case as well as some of plaintiff's other lawsuits. Time was also consumed in obtaining material from the Division of Parole that was not already in the office file.

Upon examining the papers I felt that the Court should reconsider its prior rulings in the light of the decision in Williams v. Caldwell, 75-C-1948 (E.D.N.Y., Judd, D.J.) and so (Exhibit A, hereto) suggested in my letter to the Court of May 3, 1976./ It is the best of my recollection, that a few days thereafter, I received a telephone call from Miss Carolyn Sternschein, one of the Court's law clerk's who advised me that the Court was not disposed to grant such an application. I also explained to Miss Sternschein that additional time was needed to research and brief the question of whether plaintiff's state probation report was subject to disclosure in this action. I am aware that a letter was sent by Miss Sternschein to me as a follow-up to our conversation, as a result of my conversation with the Court on June 25, 1976, at which

60a AFFIDAVIT

time Miss Sternschein was present. However, to the best of my memory, I do not recall receiving that letter. I have not been able to find it in the Williams file. It could have been mislaid in the mail room, otherwise misdirected or misfiled. In any event, I first became aware of the Court's decision upon receipt of a copy of the Court's letter to plaintiff dated June 10, 1976. I was unable to locate the decision in the Clerk's office, and as a result of an apparent misunderstanding regarding its availability in chambers for copying, I did not actually receive a copy until about a week ago, when a copy was sent to me by Counsel to the Department of Correctional Services which had been furnished a copy by plaintiff.

As I indicated to the Court on June 25, the reason for my failure to furnish the material requested was my engagement in other pressing matters, including appeals in both state and federal courts, a trial that commenced in mid-May and lasted for nearly two weeks and other matters, often complicated and of public importance, such as the case of Ayers v. Whaley, 76 Civ.1499 (WK),

61a AFFIDAVIT

before this Court. The net result was that this matter was "lost in the shuffle".

I very much regret that this occurred. I want to assure the Court that no disrespect was intended on my part, nor was there any intent to unduly delay the final disposition of plaintiff's case. The material requested by the Court is being submitted under this cover. It is respectfully submitted that the defendants have a meritorious defense to this action and that it should be considered on the merits. It would certainly be a miscarriage of justice if the Division of Parole were to be required to act in ignorance of important facts about the background and personality of an inmate convicted of a crime of violence when he is considered for parole. The instant case is one, I submit, in which the grant of a motion to vacate a default is highly appropriate. See e.g., Broder v. Charles Phizer & Company, 54 F.R.D. 583 (S.D.N.Y. 1971); Meyers v. Lavelle, 64 F.R.D. 533, 535 (E.D.Pa. 1974).

WHEREFORE, it is respectfully requested that the instant motion be granted.

ROBERT S. HAMMER

Sworn to before me this

8th day of July, 1976

s/ Thomas A. Bartley

Assistant Attorney General
of the State of New York

488-3394

May 3, 1976

Re: Michael Williams v. Benjamin Ward, et ano.
75 Civ. 3838 (WK)

Hon. Whitman Knapp
United States District Judge
United States Court House
Southern District of New York
Foley Square
New York, New York 10007

Honorable Sir:

The undersigned was assigned responsibility for the above-entitled case upon the recent resignation of Assistant Attorney General Barbara Resnicoff.

In the course of familiarizing myself with the file, and with some of plaintiff's other litigation, it came to my attention that he had raised essentially similar issues in the case of Williams v. Caldwell, 75-C-1946 (E.D.N.Y., Judd, D.J.). Enclosed are copies of decisions and orders by Judge Judd dated January 16, 1976 and April 9, 1976 treating the action as a writ of habeas corpus and denying the application for failure to exhaust state remedies. In addition, plaintiff's claim as to denial of parole was held not to be subject to federal review.

In light of Judge Judd's action, I urge that the instant case be dismissed as res judicata; both as to the proper forum in which plaintiff's claims are to be prosecuted, and as to the scope of review. Since Judge Judd has ruled that the reasons given for denial of parole are adequate as a matter of federal law, the case of Cardaropoli v. Horton, 523 F. 2d 990 (2d Cir. 1975) would be immaterial.

A

BEST COPY AVAILABLE

To: Hon. Whitman Knapp
Re: Williams v. Ward, etc.

May 3, 1976
-----2

For this reason, I ask that your order of April 7 be held in abeyance pending your consideration of the foregoing request. I anticipate receiving the materials from plaintiff's institutional file within the next few days. Should Your Honor desire the additional submission from this office it would be forthcoming within a week thereafter.

Respectfully yours,

LOUIS J. LEFKOWITZ
Attorney General
By

RSH:bai
Enc.

ROBERT S. HAMER
Assistant Attorney General

cc: Michael Williams
Plaintiff pro se
Box 338
Hapagoon, New York 12458

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL WILLIAMS,

Plaintiff,

75 Civ. 3838 WK

-against-

BENJAMIN WARD, PAUL REGAN,

STATEMENT UNDER
GENERAL RULE 9g

Defendants.
-----X

Defendants contend that there are no triable issues
as to the following material facts:

1..That the material classifying plaintiff as
emotionally disturbed consists of the following documents
which are submitted herewith for the Court's in camera inspection:
pre-sentence probation report dated April 30, 1964 with cover
sheet attached; psychiatric progress notes dated July 7, 1964,
May 31, 1973, June 12, 1974 and August 26, 1975; pre-parole
hearing data sheet dated July 30, 1975; letter from plaintiff
to Justice Cone dated April 21, 1971; memorandum dated May 13, 1971,
letter of Chief Probation Officer Fastov to Commissioner Oswald
dated May 3, 1971; letter from Justice Cone to Mr. Oliver Tweedy,
dated August 5, 1974.

2. The foregoing material is either privileged from disclosure or known to plaintiff in the case of his own letter.

3. That the foregoing material was either compiled pursuant to law and regulation or was furnished by plaintiff himself.

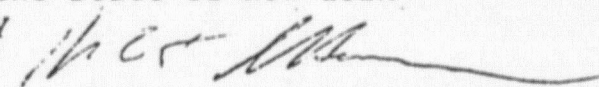
4. That any opinions classifying plaintiff as mentally disturbed were rendered in good faith, on the basis of professional judgment and are required to be placed before the Parole Board when considering plaintiff's case.

Dated: New York, N. Y.
July 8, 1976

Yours, etc.

LOUIS J. LEFKOWITZ
Attorney General of
the State of New York

By


ROBERT S. HAMMER
Assistant Attorney General
Attorney for Defendants

RECEIVED
BY MAIL

JUL 15 1976

United States district court
Southern district of New York

DEPARTMENT OF LAW
NEW YORK CITY OFFICE Civ. 3838

Michael Williams,
Plaintiff,

Affidavit in Reply

v.

Benjamin Ward, and Paul Regan,
Defendants.

STATE OF NEW YORK)

COUNTY OF RICH.) S.S.:

STATEN ISLAND)

Michael Williams, being duly sworn, deposes and says:

That he submit this affidavit in reply to the motion to vacate the summary judgement issued by decision dated, June 9, 1976, granting the plaintiff a new parole release hearing before the Board of Parole of the State of New York, and directing the removal of certain incriminating evidence against the plaintiff at his next parole release hearing.

1. On July 12, 1976, the plaintiff received a copy of the defendants' motion to vacate the summary judgement granting relief in the complaint file in this court pro se. Included was a copy of the memorandum of law for the defendant.

2. The plaintiff now moves to obtain an order denying the motion of the defendants and request the entry of the judgement granting the relief set forth in the decision of this court dated, June 9, 1976.

3. The basis of the motion to vacate the judgement is unfounded and not sufficient reasons to vacate the judgement.

The defendants' Attorney claims that he never received the letter from the court's clerk

and other immaterial matters which he could have brought before the court prior to the rendition of this court's decision of June 9, 1976, instead, Mr. Hamner decided to write a letter to the court requesting the decision of April 8, 1976 be held in abeyance pending the request to vacate the decision of the court.

The Attorney General Hamner did not even attempt to comply with the conditions of the court pursuant to the court's decision of April 8, 1976.

It is much too late to attempt to comply with the court's mandates which have been previously disregarded by the office of the Attorney General and the defendants in this action.

The Attorney General communicated with the court regarding the case on June 25, 1976 without the knowledge of the plaintiff pro se and his counsel Mr. S. Latimer.

This procedure should not have been permitted since it placed the plaintiff in a disadvantage in the case, and leaves the plaintiff in the dark as to important aspect of the case.

Furthermore, it not indicated that counsel was served with a copy of the recent papers filed by the Attorney General in support of his request to vacate the judgement in this case. It have been ordered by this court that a copy of the supportive papers upon counsel. It appears that this condition have not been complied with by the defendants again. There seem to be a repeat performance of the same thing and same conduct of the Attorney General.

The other reasons set forth by the Attorney General is insufficient to require the vacating of the judgement of this court, and the plaintiff respectfully request that the motion of the Defendants be denied in all respect.

4. The plaintiff object to the failure of the Attorney General and the defendants to supply him and his counsel with copies of the documents supplied to the court by the Attorney General with his motion to vacate the judgement and memorandum of law. This failure on the part of the defendants have further violated the plaintiff's fundamental right to be fairly heard by the court and properly present

There is sufficient case law in support of the proposition that the plain tiff is entitled to discovery of the records, and files in a Civil rights action.

There was no reason for the lack of discover by the defendants and the plaintiff maintains that his case have been prejudice, and especially, if the court decide to grant the motion of the defendants and vacate its own decision,...

Therefore, the plaintiff request an direction that the Attorney General of the State of New York, as counsil for the defendants in this action supply the plaintiff with a copy of the documents presented to this court to further prosecute his complaint in this action, if the motion to vacate is granted, and the matter set down for a trial on the merits.

The plain tiff verily believes that the position taken by the Attorney General on behalf of the defendants lack any substantial merits, and the court should adhere to the decision of June 9,1976, and enter final judgement accordingly.

5. The statement filed pursuant to rule 9(g) as previously demanded by the court in this action is defective for two reasons:

1. The statement is not factually sufficient to inform the court of the factual issues to be presented by the defendants in this action in the event that a trial is held in this court.

In paragraph (4) of the statement it is stated that the statements that the justice of the Supreme court, Kings county, and the chief probation officer made in 1971, and 1974, and anyother statements about the plaintiff being mentally disturbed and that the plain tiff threat the judge is based upon professional judgement would not be a good defense to the charges in view of the fact that the plaintiff claimed in his complaint that he was deprived of due process of law when the letters were mailed to the Parole Chairman and Commissioner of Correctional services without first affording the plaintiff the opportunity to receive notice of the charges and impartial hearing before the use of the information which the plaintiff also claim to be false, and thus depriving the plaintiff of due process of law.

4.

2. Again, the defendants have failed to answer the issues presented by the complaint by the memorandum of law.

The defendants have no intention to answer the complaint, and is only using technical issues to require the dismissal of the complaint and the vacation of the court's decision. The plaintiff respectfully urge the court to adhere to its decision.

In all respect, the court should deny the motion to vacate the judgement accordingly.

6. The district court has the authority to dismiss or to enter default judgement, depending on which party is at default for fail-use to prosecute with reasonable diligence or to comply with its orders or rules of procedura.

Flaksa V. Little River Marine Const., Co., 389 F. 2d 885(1968)

It is an abuse of discretion to vacate default judgement unless good excuse for default is shown along with a meritorious defense and lack of substantial prejudice to the plaintiff.

Wagg V. Hall, 42 F.R.D. 589.

Substantial prejudice have resulted in view of the employment offers, half-way house resident granted, and other commitments made by people of the community to the plaintiff. Arrangements that have been made to the plain tiff for pre-release assistance.

In all respect, the plaintiff urge the court to uphold its decision and enter final judgement and its enforcement.

Sworn to before me this

17 day of July 1976.

Gavin Murray

Notary Public

CAVIN MURRAY
Notary Public, State of New York
N.Y. 10000000

Respectfully submitted

Mike Williams

Mike Williams, Pro se

Chief Law Clerk

2911 Arthur Kill Rd.,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEST COPY AVAILABLE

MICHAEL WILLIAMS,

Plaintiff,

- against -

BENJAMIN WARD, PAUL REGAN,

Defendants.

MEMORANDUM AND ORDER

75 Civ. 3838

44822

KNAPP, D.J.

On July 9, 1976, defendants moved for an order pursuant to F.R.C.P. 55(c) vacating the grant of summary judgment to plaintiff on default. Although we accept as valid counsel's excuses for delay in responding to plaintiff's motion for summary judgment and the various directives of the court, we find that defendants' proffered defenses are without merit. For that reason, the motion to vacate is denied. See Moore's Federal Practice, Vol. 6, ¶55.10[1], at pp. 55-233 et seq. and cases cited in n. 14 and 15.

The gravamen of defendants' rather vaguely worded defense is two-fold. In the first place, they make the obvious point that the Parole Board is entitled to consider an inmate's mental condition in determining the advisability of release on parole, furlough, etc. Secondly, they claim that the material contained in plaintiff's parole file classifying him as mentally

FILED
U.S. DISTRICT COURT
JUL 23 1976
S.D.N.Y.

RECEIVED
JUL 23 1976

disturbed is either confidential - as, for example, his presentence probation report - or already known to plaintiff - as the allegedly threatening letter written by plaintiff to the sentencing judge.

The first proposition is, as we have noted, self evident. The issue before us, however, is not whether the plaintiff is entitled to a "sanitized" file devoid of adverse information, but rather, whether he is entitled to be informed of the nature of that adverse information and ^{to be} given an opportunity to rebut it. We think the rationale of Velger v. Cawley (2d Cir. 1975) 525 F.2d 334, cert. gr., 44 U.S.L.W. 3745 ^{2/}, and Cardaropoli v. Norton (2d Cir. 1975) 523 F.2d 990 ^{3/} compels resolution of this issue in plaintiff's favor. It is beyond cavil that classification as mentally disturbed imposes a stigma to such an extent as to constitute a deprivation of "liberty" within the meaning of the due process clause. Board of Regents v. Roth (1972) 408 U.S. 564, Perry v. Sinderman (1972) 408 U.S. 593, Lombard v. The Bd. of Educ. of the City of New York (2d Cir. 1974) 502 F.2d 631. Moreover, plaintiff has alleged - and defendants nowhere dispute - that he has been denied social furloughs, participation in work-release and release on parole as a direct result of the inclusion in his file of the adverse information here involved. The classification of plaintiff as mentally disturbed thus working "serious alteration in the inmate's conditions of confinement", it "may not be imposed in the absence of basic elements of rudimentary due process", not here provided. Cardaropoli v. Norton, supra, at 995.

With respect to defendants' contention as to confidential

72a MEMORANDUM AND ORDER

the seeming dilemma posed thereby is more imaginary than real. Defendants can provide plaintiff with a summary of the materials involved and the conclusions stated therein while at the same time maintaining the confidentiality of any sources upon which the conclusions may be based.

The final judgment will therefore provide that the defendants shall forthwith (within 30 days) provide the plaintiff with:

- a. copies of all unconfidential material in his institutional file, and
- b. a fair summary of confidential material, which summary shall not reveal sources, but shall fairly state any conclusions adverse to the plaintiff which may be drawn therefrom.

Not sooner than 10 days thereafter, but in no event later than 60 days from the filing of the judgment in this case, the Parole Board shall grant plaintiff a new release hearing.

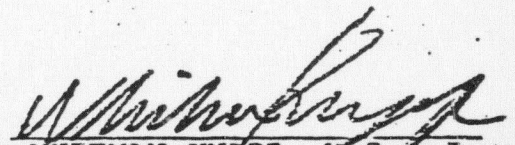
Defendants may, without waiving any rights on appeal, in with/10 days hereof submit a proposed judgment embodying the foregoing provisions. If no such judgment is submitted, the court will fashion one of its own.

We wish to make crystal clear that we have exercised all our discretion in the defendants' favor and have denied the motion to vacate solely because in our view the defense suggested is as a matter of law unavailable. It therefore follows that this order is fully appealable.

SO ORDERED.

Dated: New York, New York

July 20, 1976.


WHITMAN KNAPP, U.S.D.J.

FOOTNOTES

- 1/ Plaintiff also claims, in a sworn affidavit, that he will be substantially prejudiced in the event the default judgment is vacated, in that various employment offers and housing commitments will have to be turned down.
- 2/ Held: due process entitles discharged probationary policeman to a hearing to confront allegations of emotional instability contained in his personnel file.
- 3/ Held: inmate must be afforded rudimentary due process rights before he can be classified as a Special Offender.
- 4/ We have accepted counsel's assertion of privilege, although he has cited no authority for such an assertion.

74a MEMORANDUM AND ORDER

The application for a stay is denied, as it seems to be more appropriately addressed to the Court of Appeals

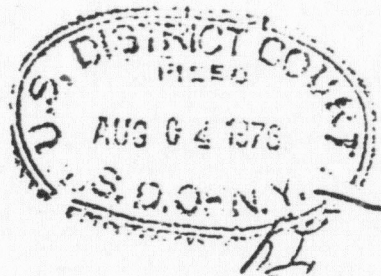
So ordered

[Signature]

U.S. D.J.
August 2, 1976

RECORDED

AUG 04 1976



1976
160
159

1976
160
159

18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



MICHAEL WILLIAMS,

Plaintiff,

- against -

BENJAMIN WARD, PAUL REGAN,

Defendants.

JUDGMENT

75 Civ. 3838

Krapp, J.

The Court, having by Memorandum and Order dated December 8, 1975 denied defendants' motion to dismiss the within action and the plaintiff having thereupon moved for summary judgment, which motion defendants did not timely or adequately respond to, and the Court having by Memorandum and Order dated June 9, 1976 found the defendants in default and granted plaintiff's motion for summary judgment, and the defendants having moved to vacate the grant of summary judgment to plaintiff on default, which motion the Court denied by Memorandum and Order dated July 20, 1976, IT IS HEREBY ORDERED, ADJUDGED and DECREED THAT:

76a JUDGMENT

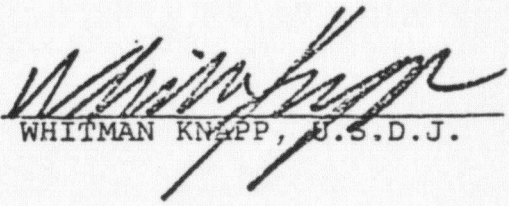
1. Plaintiff's motion for summary judgment is granted on default.
2. The defendants shall within 30 days of the filing of this Judgment furnish plaintiff with:
 - a. copies of all unconfidential material in his institutional file, and
 - b. a fair summary of confidential material, which summary shall not reveal sources, but shall fairly state any conclusions adverse to the plaintiff which may be drawn therefrom.
3. Not sooner than 10 days thereafter, but in no event later than 60 days from the filing of this judgment, the Parole Board shall grant plaintiff a new release hearing.

4. The case is hereby terminated, without prejudice to an application to restore it to the calendar for the purpose of enforcing the above specified relief.

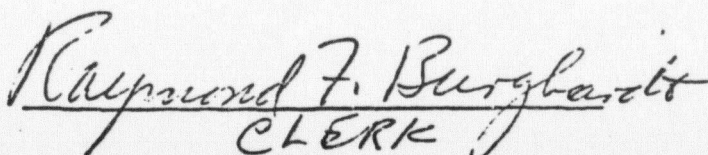
SO ORDERED.

Dated: New York, New York

August 4, 1976.


WHITMAN KNAPP, U.S.D.J.

JUDGMENT ENTERED - 8/5/76


CLERK

77a NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MICHAEL WILLIAMS,	:	
Plaintiff,	:	<u>NOTICE OF APPEAL</u>
-against-	:	75 Civ. 3338 WK
BENJAMIN WARD, PAUL REGAN,	:	
Defendants.	:	

-----X

NOTICE IS HEREBY GIVEN, that the defendants appeal to the United States Court of Appeals for the Second Circuit from the final judgment entered herein on August 5, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1291.

Yours etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
By

ROBERT S. HAMMER
Assistant Attorney General
Attorney for Defendants
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3394

TO: MR. MICHAEL WILLIAMS
AK-004
Arthur Hill Correctional Facility
2911 Arthur Hill Road
Staten Island, N.Y. 10309